

## Judicial and Administrative Processes

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# Prosecution, Adjudication, and Sanctioning: A Process Evaluation of Post-1980 Activities

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Any serious program to reduce alcohol-related crashes must seek to accomplish two objectives: (1) reduce the recidivism of apprehended offenders by deterring, incapacitating, or rehabilitating them and (2) deter the general population from driving while intoxicated (DWI) or impaired. Of these two objectives, the latter is much more important than the former. The majority of alcohol-related fatal and serious injury crashes involves drinking drivers who have *not* been previously apprehended for DWI. According to the most complete and objective estimates available, nearly 75 percent of all alcohol-related fatal crashes involve drivers who have never before refused or failed a chemical test for alcohol (Lewis 1985).

If all the DWI offenders arrested this year were incapacitated, fewer than 5 percent of next year's alcohol-related fatal crashes would be reduced (Nichols 1988a; Sterling-Smith 1976). This being the case, a 40-percent reduction in recidivism applied to *everyone* arrested for DWI would result in a reduction in next year's alcohol-related fatal crashes of about 2 percent. This is not an insignificant number. Applied nationally, it would account for an annual reduction of nearly 500 fatalities. Furthermore, many of the repeat DWIs involved in alcohol-related crashes are chronic offenders who show a complete disregard for the law and must be dealt with in an effective manner.

However, there is a more important reason to deal with all arrested offenders. What happens to these people provides the basis for deterring the much greater number of offenders who have not been caught. On any given weekend night, even in a high enforcement area, fewer than 1 in 500 drunk drivers are arrested for DWI. In most jurisdictions, fewer than 1 in 1,000 are apprehended. Over a full year, only about 1 in 20 persons who regularly drive while intoxicated are apprehended. Unless something is done to deter offenders who have not been arrested, they will continue to drive impaired and will be involved in approximately 18,000 alcohol-related fatalities each year.

The foundation for deterring these drivers depends on *their* perception of the likelihood of being apprehended and on *their* perception of what will happen to them if they are apprehended. They have only the past, publicized performance of the enforcement, judicial, and licensing systems on which to base their perceptions. That is why the prosecution, adjudication, and sanctioning components of the driver control system are so essential to reducing alcohol-related fatal crashes. Not only do they constitute a

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NOTE: During the period of this writing, Mr. Quinlan was on detail to the National Transportation Safety Board where he is now employed.

mechanism for changing the behavior of known offenders, they also provide a basis for establishing effective general deterrence.

In the past, the judicial and administrative systems have not worked well, individually or together, in providing effective and efficient processing and sanctioning of DWI offenders. There has been very little consistency from one court to another in dealing with DWI offenders. Prosecutors have had excessive caseloads and little training. Judges have been overwhelmed and, at least occasionally, disinterested in the DWI problem. Attorneys have specialized in defending DWI offenders and have created many obstacles to efficient prosecution, adjudication, and sanctioning. During this decade, the public has become much more interested in the DWI problem than ever before. In fact, for a short time, driving while intoxicated was one of the more publicized social problems. In addition to generating media interest in drunk driving, citizen activist groups such as Mothers Against Drunk Driving (MADD) and Remove Intoxicated Drivers (RID) demanded the prosecution and sanctioning of drunk drivers to the fullest extent of the law. As a result, State legislatures passed a myriad of laws, many of which have not been implemented as intended (Quinlan 1987).

## Legislative Changes Since 1980

Some progress was made during the 1980s to deal more effectively with drinking drivers. Most of the legislative changes are documented in a series of legislative digests developed by the National Highway Traffic Safety Administration (NHTSA). The most recent of these digests covers legislation passed through December 1987 (Hatos 1988). Thousands of DWI bills were considered by the States and hundreds were enacted. Legislation focused on issues such as reducing or eliminating plea bargaining, increasing the certainty of license suspensions, encouraging "hard" suspension of driving privileges, mandating jail or community service, and providing enhanced penalties for repeat offenders and for those causing injury or death.

By the end of 1987, 25 States had a mandated minimum license suspension period for a first DWI conviction; 43 States and the District of Columbia mandated license suspension after a second DWI conviction (usually for a longer period), and 45 States mandated suspensions for third or subsequent convictions (Hatos 1988). To counteract the many delays and inconsistencies that had characterized the courts during the 1970s, nearly half the States passed laws permitting administrative license withdrawal for drivers who failed a chemical test for alcohol. Even with these "administrative per se" laws, however, many States still used restricted and probationary licenses, thus softening the impact of license sanctions.

In 1982, Congress passed the Alcohol Safety Incentive Grant Program, commonly called the "Section 408 program". This program provided additional funds to States that mandated prompt and minimum "hard" suspension periods for all offenders, had illegal per se laws, mandated 48 consecutive hours of jail or community service for repeat offenders, and provided evidence of increased enforcement and public information efforts.

By October 1988, 21 States had adopted such provisions and were qualified for Section 408 grant funding. Fatalities involving an intoxicated driver declined to a greater extent (and more rapidly) in the first 10 of these States, compared with nonqualified States. A second group of 6 qualified States showed somewhat smaller decreases than the first 10, but still showed lower levels than the nonqualified States (Levy 1987).

The increased seriousness with which the alcohol-impaired offense was being perceived by the legislatures was reflected in the introduction of mandatory minimum jail sentences for first offenders. By the end of 1987, 14 States mandated minimum jail

sentences for first-time DWI convictions, and 42 States mandated jail for second convictions (Hatos 1988).

Generally, changes in sanctions resulted in progressively more severe sanctions for more frequent offenders. This reflected some tolerance for first offenders but less tolerance for second and subsequent offenders. By 1988, 23 States had habitual offender laws (Hatos 1988).

## Impact of Legislative and Other Program Changes Since 1980

Most States increased DWI arrests from 1980 to 1983, with concomitant increases in the number and proportion of offenders who were prosecuted, convicted, and sanctioned. A significant increase in public and media attention to the problem was evident through 1983, as well. After 1983, arrests, convictions, sanctions imposed, and media attention declined. Meanwhile, however, *most* States experienced reductions in the alcohol-related proportion of their fatal crashes until 1985 or 1986, when the proportion of such crashes began to level-off or rise again (Nichols 1988a). Following are experiences from two States.

### Florida

The State of Florida provides an example of how public interest in drunk driving resulted in legislation and significant increases in enforcement, prosecution, conviction, and sanctioning of offenders. An evaluation of the Florida experience (Sotter 1986) indicated that traffic fatalities in Florida increased from 1978 through 1981 along with a steadily growing public concern over drunken driving. The public perceived that sentences for driving under the influence (DUI) were too light and lacked uniformity and that a number of loopholes existed. As a result, legislation was passed in 1982 that increased mandatory minimum fines and license suspension periods for both first and repeat DWI offenders. In addition, the new law mandated 50 hours of community service for first-time offenders.

According to the 1986 report, the 1982 legislation (and the debate that preceded it) were accompanied by an increase in arrests, convictions, and license actions for DUI. The average number of days of license revocation for DUI increased from approximately 150 prior to the law to more than 500 by November 1982. The number of permanent revocations also increased dramatically. Although the provisions of the new law were not intended to increase the use of confinement, the number of jail sentences increased by 55 percent from 1981 to 1983.

Repeat offender convictions increased by approximately 20 percent over that same period. Requests for jury trials remained at less than 3 percent in all counties. Although chemical test refusals were low, they were higher for repeat offenders than for first offenders, and conviction rates were lower for repeat offenders who refused such tests.

Following the increases in arrests, convictions, and sanctions, nighttime fatalities began to drop, reaching a low in 1983. It was speculated that the reduction in fatalities would not have occurred without the significant increase in enforcement by the Florida Highway Patrol. However, most officials felt that the increased number of convictions, license actions, and other sanctions contributed to this reduction as well.

Further examination of the Florida experience suggest that the reductions in nighttime fatal crashes have been maintained. Data from the Fatal Accident Reporting System (FARS) show that the nighttime proportion of all fatal crashes declined from 63

percent in 1982 to 59 percent in 1984 and has remained at approximately that level through 1987. The proportion of fatal crashes that were single-vehicle, nighttime crashes dropped from 41 percent in 1982 to 36 percent in 1987 (Nichols 1988b).

As in Florida, several States (e.g., New York, New Jersey, Kentucky, Colorado, Utah) had initial increases in arrests, prosecutions, and convictions, followed by reductions in alcohol-related fatal crashes. In most cases, the increases in arrests and convictions were temporary, although 10- to 15-percent reductions in the alcohol-related proportion of fatal crashes were usually maintained.

### North Carolina

North Carolina provides a somewhat different example in that the number of arrests and convictions actually decreased. In addition, North Carolina is 1 of more than 20 States that passed administrative license suspension laws to increase the certainty and swiftness of license sanctions. In June 1983, the legislature enacted the "Safe Roads Act" (SRA), which made major revisions to the State's drunk driving law. North Carolina already had a high DWI arrest rate but a very low conviction rate. The legislature intended to further deter driving while intoxicated by imposing more certain and uniformly severe sanctions. The new law included short-term (administrative) license suspension for a chemical test refusal or failure; mandatory jail for multiple offenders and those involved in more serious cases; strict sentencing guidelines; elimination of lesser included offenses which had been alternatives for plea bargaining; and several provisions designed to deter young drinking drivers.

A series of reports have described the impact of the North Carolina Safe Roads Act (Lacey et al. 1984; Lacey 1987, 1988). In contrast to the Florida experience, the number of DWI arrests and the total number of convictions declined following implementation of the law. However, the proportion of arrested drivers who were convicted increased significantly (from 59 percent in 1982 to 68 percent in 1986), particularly at BACs of 0.10 and above (from 72 percent in 1982 to 91 percent in 1986).

The courts appeared to follow the intent of the law by nearly always sentencing persons convicted of more serious levels of DWI (e.g., higher BACs, multiple offenses) to jail and less serious levels to community service. The number of persons receiving license suspensions also increased significantly. The administrative suspension law resulted in immediate (10-day) license suspensions for virtually all persons refusing or failing a chemical test. In short, drinking drivers faced a greater certainty of receiving some sanction once arrested.

Some problems surfaced following implementation of the new procedures. Because the mandatory jail terms were usually served on weekends, jail overcrowding during these periods became a problem. In addition, the more complex and lengthy paperwork associated with processing cases through the court system taxed the manpower resources of the courts.

In spite of these problems and the reduction in arrests, North Carolina apparently did achieve some additional certainty in the conviction and sanctioning of arrested drunk drivers. More importantly, the changes in the way of handling drunk drivers were followed by a significant decline in the alcohol-related percentage of serious and fatal crashes, particularly for youthful drivers. Data from North Carolina (and from FARS) indicated that both the alcohol-related and nighttime proportions of fatal crashes declined through 1985, after which they remained essentially level. The declines were somewhat greater than in Florida, ranging from 10-15 percent for nighttime fatal crashes to 25-35 percent for the alcohol-related proportion of drivers killed.

In North Carolina, the administrative license suspension law, lower BAC levels for drivers under age 21, provisional licensing for drivers under age 18, raising the minimum

drinking age, and law enforcement efforts aimed at reducing the purchase of alcohol by minors deserve special mention. This combination appears to have provided a comprehensive set of deterrence measures aimed at youthful drivers and centered around the loss of driving privileges. Most importantly, these measures were accompanied by 50- to 60-percent reductions in the alcohol-related proportion of crashes involving young drivers. These reductions are of a magnitude not frequently experienced and, according to the most recent analysis (Lacey 1988), the reductions have been sustained.

### Other States Enacting Administrative Per Se Laws

As in North Carolina, most States that enacted administrative per se laws were able to show reductions in alcohol-related fatal crashes following their implementation. Many have also increased their emphasis on judicially imposed sanctions. Although the majority of these States also experienced increases in arrest rates (e.g., Oklahoma, Nevada, Colorado, and Utah), a few did not. North Carolina, Wisconsin, Oregon, and Indiana provided evidence that, even without increases in arrests, increases in license actions were accompanied by decreases in the alcohol-related and nighttime proportions of fatal crashes. Media and public attention were undoubtedly major factors as well.

In some States with administrative per se laws (e.g., Maine, North Carolina, Oregon, and Wisconsin), the decline in the alcohol-related (or nighttime) proportions of fatal crashes has leveled out but appears not to have reversed. In other administrative per se States (e.g., Colorado, Indiana, Mississippi, Missouri, Nevada, Oklahoma, and West Virginia), initial declines in these indices were followed by slight increases around 1985 or 1986 but by further declines in 1987. In still other such States (e.g., Iowa, Louisiana, and Utah), initial declines in the alcohol-related or nighttime proportions of fatal crashes were followed by recent increases that have not been reversed. Finally, in some States (e.g., Alaska and Wyoming) the enactment of administrative per se laws was followed by variable patterns in these indices (Nichols 1988b). Overall, a study by Zador, Lund, Fields, and Weinberg (1988) found that the adoption of administrative per se laws by 18 States resulted in approximately 9 percent fewer alcohol-related fatalities.

### Changes in Caseload, Convictions, and Sanctioning

Just how much increase in judicial caseload accompanied the legislative emphasis of the 1980s? Surprisingly, it does not appear that the increases in arrests, filings, and convictions were dramatic. In most States, increases in arrests preceded major legislation. On a national basis, for example, DWI arrests increased by about 13 percent from 1978 to 1980 and by 27 percent from 1980 to 1983. Arrests then declined by about 2 percent from 1983 to 1986 (FBI 1987). While most States passed DWI legislation throughout the 1980-87 period, the greatest activity for major legislative packages appears to have been from 1981 to 1983.

A review of DWI arrests from the reports available indicated that, during the years immediately surrounding major legislation in the various States, changes in the numbers of drivers arrested for DWI varied from 30-percent decreases (e.g., North Carolina) to 50- to 60-percent increases (e.g., Florida and Minnesota). Using 1980 as a baseline, increases of 20 to 30 percent in the numbers arrested were typical (e.g., New York, New Jersey, Utah, Colorado, and California). Arrests began to level off or decline in most States by 1984.

Changes in the *numbers* of offenders convicted of DWI varied from 20-percent decreases to increases of 50 percent (e.g., Kentucky) over baseline levels. Most of the States appear to have increased the number of convictions by 20-40 percent. Estimated

conviction rates generally varied from 70 percent to 90 percent, usually with initial increases followed by decreases to near baseline levels.

Following is a sampling of States, from east to west, for which arrest, conviction, or sanctioning information was found. These data provide an idea of the magnitude and timing of arrest and caseload changes that occurred after 1980, as well as changes in sanctioning policies.

*Maine* implemented major legislation in 1981. Arrests increased 29 percent from 1978 to 1981 (prior to the law) but only 7 percent from 1981 to 1983 (after the law). Arrest rates returned to prelaw levels by 1984. Over the 6-year period surrounding the legislation, conviction rates increased from 66 percent to 90 percent of those arrested (Hingson et al. 1987).

*Massachusetts* implemented major legislation in 1982. Hingson et al. (1987) found that arrests increased by 20 percent in the 3 years prior to the 1982 law and 29 percent after the law became effective. Convictions increased by 31 percent. The use of jail increased dramatically from 1980 to 1983 (Massachusetts Senate Report 1984, 1986).

*New York* implemented its "STOP-DWI" legislation in 1981. Arrests increased for 3 successive years following the legislation, then declined slightly. In 1985, there were still 32 percent more arrests and 42 percent more convictions than in 1980. The conviction rate increased from approximately 82 percent in 1980 to 89 percent in 1985. The use of jail sentences increased by 56 percent (New York DMV 1985, 1986).

In *New Jersey*, DWI arrests increased by 33 percent from 1980 to 1982, then began to decline. Convictions showed a similar trend. By 1985, DWI arrests were 15 percent above their 1980 level. Convictions were only 6-percent higher, having decreased significantly after 1983. The annual conviction rate varied between 79 and 90 percent of those arrested, with an average of 85 percent over this period (New Jersey Department of Law and Public Safety 1986).

*Kentucky* passed major legislation in 1984. DWI arrests increased the first year following the law, then declined. By 1986, arrests were only 3 percent above the 1983 level, but convictions were still 56 percent higher than in 1983. The conviction rate increased from 49 percent in 1983 to 72 percent in 1986 (Kentucky Division of Driver Licensing, personal communication 1988).

*Indiana* implemented major legislation in 1982 and 1983. Arrests remained level, but the number convictions increased by 18 percent after the 1983 legislation. The conviction rate increased from 63 percent to 77 percent. When no BAC information was available, the conviction rate was only 48 percent. In contrast, the conviction rate for the more serious felony DUI charge was 95 percent. The proportion of convicted offenders receiving license suspensions in Indiana increased from 50 percent before the 1983 law to 70 percent after the law, but *all* convicted offenders should have received a court-ordered license suspension. Similarly, according to Foley et al. (1986), all offenders should have received an administrative license suspension following the filing of an affidavit by the arresting officer, but in 20 percent of the arrests, no affidavit was filed. Approximately 90 percent of the offenders received fines. The proportion of convicted recidivists who received a jail or community service sentence increased from 70 percent to 75 percent. The majority of fines and license suspensions was served as sentenced, but approximately two-thirds of the jail sentences were never served (Foley et al. 1986; Automotive Transportation Center 1986; Indiana Governor's Task Force 1987).

*Wisconsin* implemented new legislation in mid-1982. Arrests decreased by 17 percent from 1980 to 1982 (prior to the law) and remained approximately level from 1982 to 1983. However, license suspensions increased by 50 percent from 1980 to 1982 and by another 40 percent in 1983. In 1983, virtually all offenders arrested for Operating While Intoxi-

cated (OWI) lost their driving privileges through a *combination* of judicial and administrative sanctions (Blomberg et al. 1987).

In *Minnesota*, comprehensive legislation was passed in 1982. DWI arrests increased each year from 1981 through 1984, then declined slightly through 1986. In 1986, arrests were still 60 percent above their 1980 level. Information on convictions was not available, but license revocations increased by 40 percent. However, while the number of administratively imposed license actions increased by 180 percent, the number of court-imposed license revocations decreased by 65 percent (Minnesota Department of Public Safety 1987). As in North Carolina, this suggested that the administratively imposed license actions may have been substituted for judicially imposed license actions. In Minnesota, officials have indicated that most first offenders who receive administrative license revocations are granted restricted driving privileges rather than hard license suspensions.

*Missouri* legislation was implemented in 1982 and 1983. DWI arrests increased by 14 percent from 1981 to 1983, decreased by 19 percent from 1983 to 1985 and increased again by 17 percent in 1986, when they were 7 percent above the 1981 level (Bruce and Bruce 1988).

*Colorado* implemented major legislation in 1983. DWI arrests increased by 44 percent from 1980 to 1984, then decreased from 1984 to 1986. Arrests were 21 percent higher in 1986 than in 1980. Convictions for DWI increased by 38 percent from 1981 to 1983 (Colorado Division of Highway Safety 1984, personal communication 1987).

*Washington* implemented major legislation in 1979. City and county police increased their DWI arrest activity. Washington State Police first decreased their DWI arrests from 1978 to 1980, then increased such arrests from 1980 to 1981. This pattern is very different from that in most States such as New York, Florida, Arizona, and California where State police agencies produced the initial increases in DWI arrests.

After the legislation was implemented in Washington, convictions for DWI increased by 50 percent and convictions on all alcohol-related driving offenses increased by 21 percent. Overall, a conviction rate of just over 80 percent of those adjudicated was maintained. A significant shift away from plea bargaining occurred. The mean daily population of persons incarcerated for DWI offenses increased by approximately 96 percent from mid-1981 to mid-1983, but there was an increasing tendency for courts to recommend "no license suspension" for first DWI offenders. By 1982, nearly half of the first offenders avoided license suspension (Klingberg et al. 1984).

## A More Detailed Look at Changes in DWI Processing

The examples described above give an overview of the types of statewide changes in caseload and sanctioning policies that the courts experienced during the 1980s. However, these examples do not provide an adequate view of the effects of legislation on court processing parameters such as prosecution policies, court congestion, delay of dispositions, records available, and enforcement of sanctions. To get a better idea of these effects, the California experience is described in more detail, using information from studies of Los Angeles County (Bloch and Aizenberg 1985), Alameda County (Hepperle and Klein 1985), Santa Clara County (Lang 1986), and the State as a whole (Perrine 1984; Helander 1986; Stewart and Laurence 1987). Many of the problems that were identified by these reports were characteristic of the problems experienced by other States.

### Summary of California Legislation

The new laws that became effective in 1982 in California were very similar to laws

passed in other States. They provided for (a) an illegal per se offense at 0.10 alcohol concentration; (b) an attempt to limit judicial discretion; (c) increased fines; (d) potential jail terms for all offenders and mandatory jail terms for repeat offenders; (e) increased use of license restrictions; and (f) restricted plea bargaining (Stewart and Laurence 1987). California did not pass an administrative per se licensing law.

Statewide, DUI arrests increased by 18 percent from 1979 to 1981 (prelaw) and by another 6 percent from 1981 to 1983, but then declined by approximately 2 percent from 1983 to 1985 (Hepperle and Klein 1985; Lang 1986). The conviction rate for persons arrested for driving while under the influence increased from 61 percent in 1981 to 68 percent in 1982, an increase of 11 percent. An additional 4 percent of offenders were convicted of alcohol-related reckless driving (Perrine 1984).

### Alameda County

The report by Hepperle and Klein (1985) reviewed the effects of the 1982 law in Alameda County. It indicated that court processing of DUIs became more complex and lengthy because of the 1982 law. This finding is parallel to findings in Los Angeles County and in Florida.

The average time to close a DUI case increased from 48 days (in 1981) to 86 days (in 1983-84), an increase of nearly 80 percent. This occurred because more defendants had attorneys and waited longer in the process (usually until the pretrial hearing) before pleading guilty. Before the law, over half pleaded guilty or no contest at arraignment. By 1983-84, only 38 percent did so. The percentage of "same day dispositions" declined from 32 percent (in 1980-81) to 23 percent (in 1983-84), a decrease of 28 percent. Still, as in most other States, more than 80 percent of the offenders eventually pleaded guilty. It simply took more court time and effort.

Little evidence was found of plea bargaining, although approximately 16 percent of arrests failed to result in the filing of a DUI charge. These cases usually involved a BAC less than 0.13 percent or (as in other States) a test refusal. Only 4 percent of the sampled cases went to trial, and more than 80 percent of these trials resulted in convictions, compared with 73 percent in 1980.

Relative to sentencing, the law resulted in higher fines, longer terms of probation, and frequent use of mandatory DUI school and driver's license restrictions (not full suspensions or revocations). Jail and license suspensions were generally reserved for second or third offenders, and "straight jail" was less often imposed than "weekend work" and work furlough. Seventy percent of those sentenced received fines of \$500 to \$700, not including the cost of school, treatment, or weekend work. Ninety-five percent of all sentences included probation, usually with minimal supervision. The use of 90-day license restrictions increased, but these restrictions seldom resulted in the total loss of driving privileges. In over half the cases, no license action was taken at all.

Approximately half of all defendants received jail sentences, but less than a third of them actually served such sentences. Most did weekend work. This was similar to the Florida experience, where two-thirds of those sentenced to jail never served their sentences. In Alameda County, 55 percent of the defendants were repeat offenders. This is a high proportion, compared with the average of 20-30 percent reported in most States. An estimated 25 percent of those convicted of DUI were rearrested within 2 years. The report recommended wider use of licensing suspensions (including administrative actions), vehicle confiscation, and individual treatment.

### Los Angeles County

In southern California, Bloch and Aizenberg (1985) evaluated the effects of the 1982 law on the Los Angeles County courts, which processed more than a third of all the DUIs

in the State. They found that the number of guilty pleas had been rising prior to the law, but not as rapidly as the number of filings. Thus, a slow but steady decrease occurred in the proportion of cases resolved by a guilty plea.

After the 1982 law, the number of guilty pleas dropped significantly, while the number of filings continued to increase, thus lowering the conviction rate even more. Then, in 1983, while the number of guilty pleas remained constant, the number of filings dropped. As a result of these variations, the conviction rate first decreased from 77 percent in 1981 to 68 percent in 1982, then increased to 73 percent in 1983. Overall, the conviction rate decreased by 6 percent from 1981 to 1983.

Acquittals and dismissed cases increased by 68 percent and 78 percent, respectively. However, they constituted less than 4 percent of the dispositions of all filings. Similarly, while jury and bench trials increased by 55 percent and 7 percent, respectively, they constituted less than 2 percent of all filings. This was comparable to the 4 percent of filings resulting in trials in Alameda County and 3 percent in Florida.

Efforts to delay or avoid the effects of sanctions became much more common after the 1982 law. Continuances, transfers, and failures to appear increased by 78 percent, 200 percent, and 23 percent, respectively. As a result, court backlogs increased. The rate of dispositions to arrests went from 79 percent in 1981 to 72 percent in 1982 and back up to 77 percent in 1983. In spite of the increase in overall congestion, the report indicated that the courts were able to function *without* large-scale disruption or distortion.

A review of FARS data showed significant reductions in both alcohol-related and nighttime proportions of fatal crashes from 1982 through 1986 (Nichols 1988b). Similarly, a review of studies by Bloch and Aizenberg indicated reductions in alcohol-related crashes following the implementation of the law (Bloch 1983, 1984; Bloch and Aizenberg 1984; Peck 1983, 1984), although Hilton (1983) cast some doubt that such reductions were caused by the law. Bloch and Aizenberg speculated that the California law might have been more successful had it paid more attention to increasing the *certainty* of punishment. They also pointed out that no long-term, statewide effort was undertaken to assist the courts in dealing with their congestion problems.

### Statewide California Studies

In 1987, Stewart and Laurence completed a statewide study of the California experience. These researchers provided several additional insights. First, they pointed out that a survey of prosecutors in 12 counties indicated that nearly all felt that the new illegal per se law helped reduce plea bargaining and aided in the prosecution of DUI cases. Still, 90 percent of the convictions were under the older, "presumptive" DUI statute, and only 5 percent were under the per se statute. An additional 5 percent of convictions were under both statutes. In addition to the per se law, the practice of plea bargaining was further restricted by the new law. DUI charges could no longer be reduced to simple reckless driving, but could be reduced to alcohol-related reckless driving. The latter charge would be counted as a prior DUI if the offender was rearrested within 5 years. Prior to the law, the conviction rate was higher for repeat than for first offenders. After the law, the conviction rates for the two groups were approximately equal.

Despite the public outrage over DUI crashes that resulted in death or injury, felony DUI cases apparently were not vigorously prosecuted. The Department of Motor Vehicles (DMV) reported a conviction rate of only 27 percent on felony DUI charges, compared with a conviction rate of 69 percent for misdemeanor DUI charges (Perrine 1984). This was opposite to the findings in Indiana. Still another study (Helander 1986) found that less than 20 percent of DUI offenders involved in a fatal or injury crash were arrested for felony DUI and fewer than 20 percent of those arrested were convicted. In fact, 35 percent of those arrested for felony DUI showed no record of conviction on any

charge. Helander indicated that while the law had resulted in an increased conviction rate for first offenders, it led to a decreased conviction rate for repeat offenders.

The problem with felony DUI cases apparently involved several aspects of processing, including the transferring and recording of information. In a study of more than 5,000 convicted first offenders who were enrolled in education or treatment programs, 400 reported that their arrests had involved an injury crash, and 99 reported that their arrests had involved a fatal crash. A review of DMV records for 245 of the offenders involved in injury crashes and 60 involved in fatal crashes found that 14-18 percent had no alcohol-related convictions of any kind on their record. Of the 60 records of drivers who reported having been involved in a fatal crash, not one showed a fatal crash associated with DUI or reckless driving.

In most counties, the courts had no information about the number of offenders at various processing stages in the system. Most counties had no fully computerized recordkeeping systems. Thus, the court's records were often incomplete, difficult to decipher, or irretrievable. In addition, problems were found with the accuracy and completeness of DMV records. Sixty-two percent of first offenders, reported as dropouts by treatment programs, were recorded by DMV as having completed the program. Twenty-three percent did not show a DUI conviction on their records.

Eighty-one percent of repeat offender dropouts were not recorded as such by DMV (Helander 1986). The failure of agencies, primarily the courts, to transfer information to the DMV prevented the imposition of mandatory license actions that should have followed dropout from treatment. Stewart and Laurence pointed to the importance of the recommendation of the Presidential Commission on Drunk Driving regarding the need for a comprehensive, statewide tracking and reporting system.

The 1982 law also resulted in more DUI offenders ordered to jail, to treatment, and to pay higher fines. More license actions were imposed, but they were usually license restrictions, not actual suspensions or revocations. More offenders received probation and for longer periods, but few received any official supervision. First offenders who received probation generally avoided mandatory license actions. In 1984, the typical first or second offender sanction combination was a fine, probation, a restricted license, and referral to a treatment program. Another frequent pattern for first offenders was a fine, probation, treatment, and a 2-day jail sentence in lieu of a license restriction. Second offenders often received a higher fine, probation, and a longer jail sentence than first offenders (Helander 1986). There was a clear hesitancy to impose any form of hard license suspension or revocation. This is ironic, since more evidence for the effectiveness of license sanctions comes from the California DMV than from any other single source (e.g., Hagen 1977; Peck et al. 1985; Tashima and Peck 1986).

Some of the most important findings covered the enforcement of sanctions. The most common violation of probation for first offenders was failure to pay the fine (15 percent of first offenders studied). Because of jail overcrowding, fewer than half the offenders sentenced to jail actually spent time incarcerated. Often months passed before space was available for an offender to serve even a 2-day sentence. Weekend sentences made the problem even more severe. Sometimes offenders would register and be sent home because the jail was full. Some jurisdictions allowed offenders to participate in supervised work programs.

Enforcement of license actions was particularly weak. The 1982 legislation increased the mandatory penalties for convicted DUI offenders who drove while suspended or revoked. However, the conviction rate for such offenders fell substantially after the new law took effect, from 46 percent in 1981 to 26 percent in 1982. Stewart and Laurence speculated that prosecutors and the courts were resisting the enforcement of licensing sanctions.

In summary of their statewide review, Stewart and Laurence suggested that while the

certainty of some punishment for first offenders occurred as a result of the 1982 law, the certainty of punishment for repeat offenders actually decreased following implementation of the new law. As in Florida, the swiftness of punishment decreased following the new law in California. Furthermore, and perhaps most importantly, license actions were applied unevenly and enforced weakly. In spite of the convincing evidence for the effectiveness of license actions in reducing recidivism and in creating general deterrence, actual suspensions or revocations were most often traded off for treatment, restricted licenses or, in some cases, 2-day jail sentences. In addition, very little emphasis was placed on enforcing license actions when they were applied. These problems have been reported in a number of other States (e.g., Massachusetts, North Carolina, and Washington).

## Summary of Changes and Impacts

What can we conclude from the information reported by these States? Did the tougher laws of the early 1980s make prosecution and adjudication more efficient or more difficult? Information from several States suggested that illegal per se, improved implied consent, and perhaps administrative per se laws facilitated prosecution and adjudication.

On the other hand, more severe and mandatory sentences and anti-plea bargaining laws often increased the difficulty of processing cases. This increased difficulty led to more frequent use of defense lawyers, longer periods from arrest to case disposition and, in some cases, an increased number of trials requested (although trials accounted for a very small percentage of all dispositions in most jurisdictions). Furthermore, mandatory sentences were generally viewed unfavorably by judges who frequently found ways to circumvent them, particularly with regard to license actions and jail sentences.

Has legislation resulted in greater or lesser certainty of conviction and punishment? In most cases, the certainty of conviction increased, at least temporarily. Most States reported increased numbers of persons convicted (largely due to increased arrests) and increased proportions of those arrested who were convicted. Administrative per se laws have increased the certainty of at least one punishment. In addition, restrictions on plea-bargaining made it more likely that offenders would be convicted on an alcohol-related charge. A 1986 NHTSA study indicated that anti-plea bargaining laws were effective, but that judicial cooperation was essential.

Some sites experienced sharp increases in conviction rates and, in other sites, already high conviction rates were maintained. In Fort Smith, Arkansas, a study by Surla, Voas, Koons, and Reiner (1987) found that the elimination of plea bargaining resulted in a conviction rate increase from 72 percent (prelaw) to 88 percent (postlaw).

It also appears that more offenders received at least some sanctions, including fines, license actions, jail, and community service. While this was true of license actions as well as the other sanctions, many courts (and administrative agencies) appeared to have made an effort to avoid the use of hard license suspensions.

Was the severity of sanctions increased? While severity varied somewhat, most States reported increased levels of fines, use of jail sentences (even for first offenders), and use of community service. Again, with license actions, the answer was less clear. While more offenders received some form of license action, this was frequently accomplished by administrative license actions that were less severe (e.g., 90 days) than the maximum criminal sanctions (e.g., 1 year) that could have been imposed by the courts. In several States, courts did not impose license sanctions if they were already being imposed administratively. Even in States without administrative per se laws, efforts were made to avoid using hard license suspensions.

Have the existing procedures and laws deterred the drinking driver? Fewer drinking drivers are on the road today than in the 1970s (IIHS 1987; Palmer and Tix, 1986; Tix and Palmer, 1987). Also, fewer drivers are at the higher alcohol concentrations. Most importantly, nearly every index of alcohol-related crashes has shown 10- to 15-percent reductions in the problem since 1982. Greater reductions have occurred among young drinking drivers. Many factors have combined to cause these reductions. Among them are increased enforcement, publicity, and public interest. However, the evidence regarding the effectiveness of sanctions, combined with the increased application of sanctions in the 1980s, suggests that the increased prosecution, adjudication, and sanctioning activities have contributed to these reductions.

What are the most effective sanctions? For the deterrence of first offenders and would-be offenders (i.e., general deterrent effect), the swift and sure application of license suspensions has been more effective than any other measure (Nichols and Ross, this volume). Evidence also shows that significantly higher fines have had both specific and general deterrent effects for first-time offenders (Homel 1981; Tashima and Peck 1986; Votey and Shapiro 1985). In addition, mandatory minimum fines can be used, as they are in New York State, to provide a funding mechanism for supplying the police, prosecutors, and the courts with the resources they need to sustain a deterrent effort. Also, 2-day jail sentences for first offenders can evidently have both specific and general deterrent effects (Falkowski 1984; Cleary and Rogers 1986; Zador et al. 1988; Jones et al. 1988). However, the use of a jail sanction is considerably more costly than other sanctions and causes more disruption of the courts.

Finally, for more severe repeat offenders, particularly chronic offenders, neither existing sanctions nor rehabilitation programs alone have had any significant effect. Confinement in special facilities, with provisions for assessment and referral, can have some impact (Siegal 1985). Clearly, more emphasis must be placed on keeping such offenders off the highways until some medical evidence is provided that their drinking problems have been addressed.

Has progress been made in deterring repeat offenders or suspended drivers from continuing to drive? For repeat offenders and those who continue to drive after license suspensions, there is growing interest in more severe license sanctions, license plate confiscation, vehicle impoundment or confiscation, and surveillance by special patrols. However, such actions have been inadequately applied and evaluated. This area deserves much more attention than it has received.

How can we solve the existing DWI adjudication problems of the judiciary? If we take advantage of what we have learned from our past experiences and find more effective ways to communicate these findings to prosecutors, judges, legislators, and other officials, we should be able to increase the *effectiveness* of prosecution and judicial actions.

The remaining problem will then be *efficiency*. Effective prosecution and sanctioning efforts will likely continue to have adverse effects on the efficiency of the courts because of resistance by defendants and defense lawyers. One recourse is to provide the courts with adequate resources so they can continue to function, taking whatever time is proper and necessary to carry out their duties. The courts can provide more certainty to the conviction and sanctioning process given adequate time and resources to do so.

## Remaining Issues and Problems in Processing Apprehended DWIs

In the wake of the legislative changes of the 1980s and the increased arrests that accompanied these changes in many States, court overload and backlogs have presented

continued obstacles to effective and efficient prosecution and adjudication of DWI offenders. While legislation (e.g., illegal per se laws) has been passed to facilitate prosecution, more severe penalties have frequently resulted in fewer guilty pleas (at least early in the process) and more involvement by defense lawyers. The result has often been longer periods from arrest to disposition.

In addition to case overload, inadequate training of persons who are assigned DWI cases remains a major problem. Prosecutors, judges, probation officers, and other professionals in the adjudication system frequently have limited understanding of the drunk driving problem and its complexities. Chief prosecutors consider most law school graduates inadequately prepared in procedural and trial advocacy skills. Usually no formal entry training, other than a brief orientation, is provided for newly appointed assistants. In addition, most lower court judges receive little or no training prior to their election or appointment to the bench. A few States require continuing education programs for sitting traffic court judges during their tenure on the bench (Quinlan 1987).

The problems of court overload and inadequate training, combined with the inherent independence of the judiciary, frequently result in the imposition of either inadequate or inappropriate sanctions. Little knowledge or consensus exists about sanctioning policies that would be proper and effective. Knowledge about the effectiveness of various sanctions has less often been taken into account than have operational impacts. The result has been a failure to more effectively change the behavior of those offenders who are apprehended and to more effectively deter offenders who are not caught.

In summary, the problems that remain in the processing of DWI offenders include the following.

- Overload and backlogs
- Inadequate training for prosecutors and judges
- Inadequate resources to avoid disruption of the system and distortion of sanctions imposed
- Plea bargaining (especially to a non-alcohol-related offense)
- Excessive delays between arrest and disposition
- Offenders not prosecuted or convicted on DWI charge
- Lack of consensus regarding effective sanctioning policies
- Excessive and inappropriate exceptions to sanctions
- Diversion into education or treatment in lieu of, rather than in addition to, other sanctions
- Failure to deal with offenders who violate terms of sentences
- Failure to more effectively reduce recidivism
- Failure to more effectively deter offenders who are not caught
- Failure to effectively track offenders from arrest to completion of sanctions

Many of the reports reviewed for this chapter, as well as a review of the literature on the effectiveness of sanctions (Nichols and Ross, this volume), emphasized the importance of swift and sure license suspensions in reducing alcohol-related crashes. In addition, several studies pointed to the need for followup to ensure that suspensions were not violated. The use of surveillance patrols, more severe suspensions, license plate confiscation, vehicle impoundment or confiscation, and confinement have frequently been proposed for dealing with suspended offenders who continue to drive.

A consensus appears to be growing that every reasonable effort should be made to impose meaningful, hard license sanctions and to ensure that such penalties are fulfilled. A review of Missouri's experience with DWI legislation in the 1980s (Bruce and Bruce

1988) pointed out that "nothing seems to be as important to the American driver as that plastic card evidencing the right to drive upon the public highways. Defense attorneys will readily admit that their primary responsibility, and the reason they are retained by their clients, is to make sure their client keeps his or her license." Polls conducted in Minnesota (Rodgers and Cleary 1983) and other States indicated that the loss of license was the most feared penalty among drivers who had not been arrested for DWI. A problem of driving while suspended does exist. However, additional emphasis should be placed on resolving that problem, rather than abandoning or circumventing the most effective sanction known.

A report on Ohio's DWI experience by Katz and Sweeney (1984) suggested that convicted drunk drivers who continue to drive after their licenses have been suspended constitute a significant threat to the safety of others and must be dealt with more severely than in the past. These authors further suggested that "the mandatory surrender of license plates during suspension periods should be required if the offender is the holder of plates and consideration should be given to requiring the surrender of license plates if a vehicle owner permits an unlicensed driver to operate his vehicle."

Many judges have claimed that the use of hardship or occupational licenses is necessary to avoid loss of employment by the offender. However, studies conducted in Delaware (Johnson 1986) and in Mississippi (Wells-Parker and Cosby 1987) indicated that very few offenders lost employment because of lost driving privileges.

## **NHTSA Recommendations**

In 1987, NHTSA implemented a series of State workshops to review the status of the DWI problem and to explore ways to reduce it. A manual was developed to provide background in the various areas of DWI prevention and control. In the adjudication section, recommendations were made regarding the prosecution, adjudication, and sanctioning of DWI offenders (Quinlan 1987). Following is a summary of those recommendations, many of which dealt with the problem of establishing adequate training and communication programs.

### **Prosecution**

1. Establish through the District Attorney's training office or the Attorney General's office, a DWI prosecution assistance center.
2. Develop a State DWI trial manual, or adapt the NHTSA manual.
3. Develop a DWI prosecutor seminar and self-instruction program.
4. Conduct specialized training for junior prosecutors.
5. Develop case-tracking and prosecutor performance systems.
6. Pilot test the elimination of plea bargaining in DWI cases.
7. Develop a DWI section to a prosecutors newsletter.

### **Adjudication**

1. Through the State judicial education officer, develop a DWI adjudication support program for judges.
2. Develop a State DWI bench book (or use the NHTSA bench book).
3. Develop a DWI seminar and self-instructional training program.

4. Encourage judges to participate in specialized training of DWI adjudication.
5. Develop/implement a DWI case-tracking system at the lowest court level for use in that court and community. Integrate with a statewide tracking system.
6. Use a standardized psychometric test as the basis for drinker classification and referral to treatment. Ensure that personnel using the test are adequately trained.

### **Sanctions**

1. Enact and implement administrative per se legislation.
2. Conduct a review of sanctions which can be applied to DWI offenders.
3. Develop a State sanctioning policy and grid (or matrix) to aid the courts in developing packages of sanctions appropriate to DWI offenders.
4. Implement jail/treatment combinations for multiple offenders in conjunction with long-term outpatient aftercare and support.
5. Implement community service programs as an alternative to jail, when jail crowding is a problem or for certain populations (e.g., youthful offenders).
6. Provide long-term probation as a means of ensuring compliance with sanctions and participation in treatment programs or for certain populations (e.g., youthful offenders).
7. Eliminate diversion programs.

## **Status of Recommendations by the Presidential Commission on Drunk Driving**

In November 1983, the Presidential Commission on Drunk Driving issued its final report. This report contained a number of recommendations that have direct relevance to the prosecution, adjudication, and sanctioning of DWI/DUI offenders. Since the Commission spent considerable time and effort developing its recommendations, it is appropriate to review them and the status of State programs that relate to them, before making additional recommendations.

The Commission made recommendations regarding driving while under the influence in 10 major areas: public awareness, public education, private sector, alcoholic beverage regulation, systems support, enforcement, prosecution, adjudication, licensing administration, and education and treatment (Presidential Commission 1983). Following are the recommendations most relevant to the purposes of this review. Included with the recommendations is available information on the status of legislation and/or programs related to these recommendations. This information was not part of the Commission's recommendations. Much of it comes from NHTSA's Legislative Digest (Hatos 1988) and was current as of January 1988.

### **Systems Support**

#### **Program Financing**

*Legislation should be enacted at State and local levels that creates a dedicated funding source including offender fines and fees for increased efforts in the*

*enforcement, adjudication, sanctioning, education, and treatment of DUI offenders.*

The National Commission Against Drunk Driving (NCADD) indicated that in 1988 approximately 40 States had user funding for at least some of the components of their DUI control system. New York provides the best example of such a system.

The availability of adequate resources for the courts to process DWI cases is essential for an effective deterrent effort. More cases and more severe penalties, combined with less plea bargaining and fewer exceptions to sanctions, will result in significantly greater demands on the court. However, the courts can withstand these pressures if adequate resources are provided.

### **Citizen and Public Support**

*Grassroots citizen advocacy groups should be encouraged to continue fostering awareness of the DUI problem, and to cooperate with government officials, prosecutors and judges to deal more effectively with the alcohol-related crash problem.*

In 1988, these groups were active in nearly every State, but a Catholic University Study (McCarthy et al. 1987) suggested that the number of new chapters has been declining since 1983. These groups provided the impetus for the progress made in the 1980s. Without active citizen concern for this issue, it is unlikely that further progress can be made.

*State and local governments should create task forces of governmental and nongovernmental leaders to increase public awareness of the problem and should apply more effectively DUI laws.*

By 1984, more than 40 States had such task forces. Very few were known to be in existence in 1988. This is unfortunate, since they provided the blueprints for State action in the beginning of the decade.

### **Criminal Justice System Support**

*Police, prosecutors and courts should publicly assign a high priority to enforcing DUI statutes.*

Most States increased their priority on DUI enforcement, prosecution, and adjudication in the 1980s. Since 1985, emphasis appears to have waned.

*Police, prosecutors, judges, and other related justice system personnel should participate in entry level and annual inservice training programs established to improve the detection, prosecution, and adjudication of DUI offenders.*

An estimated 36 States had ongoing programs for prosecutors and judges in 1988. Still, the majority of prosecutors and judges have apparently never received training or attended seminars regarding the DWI issue.

*Prosecutors should provide local enforcement agencies and courts with periodic legal updates on developments and/or changes in the DUI laws.*

No additional information available

*The Chief Justice or highest appellate judge in each State should convene an annual meeting of all components of the legal system to review the progress and problems relating to DUI offenses.*

No additional information available.

## Tracking and Reporting Systems

*Police prosecutors and courts should collect and report DUI apprehension, charging, and sentencing information to the State licensing authority. Convictions on military and Federal lands, including Indian tribal lands, should also be reported. The State licensing authority must maintain a traffic records system capable of tracking offenders from arrest to conviction, including sanctions imposed by judicial and licensing authorities.*

From the reports reviewed, it appears that most courts do not have automated systems. Only a handful of States have attempted to develop a statewide *data* system and no known statewide *tracking* systems exist. Some community-level tracking systems exist but are not integrated into State systems. This is an important deficiency that should receive additional emphasis.

## Enforcement

### Chemical Testing

*Each State should establish an "implied consent" statute which provides that all drivers licensed in the State are deemed to have given their consent to tests of blood, breath, or urine to determine their alcohol or drug concentration.*

As of January 1988, all 50 States had implied consent laws in some form. In 31 States and the District of Columbia, such laws applied to other drugs as well. If properly formulated, these laws provide an important incentive for drivers to provide alcohol concentration information. Such information, in turn, plays a major role in the ability to successfully prosecute and convict drinking drivers.

One of the most important provisions of an implied consent law is that the *penalties for refusing must be greater than those for either a DWI or an illegal per se conviction*. In 1988, it was estimated that approximately half the States had implied consent penalties that were more severe than penalties for a conviction of DUI or illegal per se.

Other important provisions of an implied consent law are:

*(a) that a test refusal can be introduced at a DUI trial as evidence of consciousness of guilt; (b) that offenders who are unconscious or otherwise incapable of refusal are deemed to have given their consent to a test, the results of which are admissible in any trial or proceeding; (c) that an individual's right to consult his attorney may not be permitted to unreasonably delay administration of the test; (d) that results of preliminary breath test devices be admissible in the DUI trial proceedings, and (e) that refusals in sister States shall result in license suspensions in the State of driver residence.*

## Prosecution

### Plea Bargaining

*Prosecutors and courts should not reduce DUI charges.*

As of January 1988, 13 States either prohibited or limited plea bargaining. While many prosecutors feel that plea bargaining is essential, it undermines attempts to create general deterrence. Proven sanctions such as license suspensions often cannot be imposed if the offense is plea bargained.

### Definition of BAC

*States should enact a definition of breath alcohol concentration and make it*

*illegal to drive or be in control of a motor vehicle with a breath alcohol concentration above that level.*

As of January 1988, 14 States plus the District of Columbia defined illegal alcohol concentrations in terms of breath alcohol (BRAC) as well as blood alcohol (BAC) concentrations.

### **Illegal Per Se at 0.10 Alcohol Concentration**

*Legislation should be enacted making it illegal per se for a person with an alcohol concentration of 0.10 or higher within 3 hours of arrest to drive or be in actual physical control of a motor vehicle.*

As of January 1988, 44 States plus Puerto Rico had illegal per se laws.

### **Appellate Action**

*Prosecutors should initiate appropriate appellate actions to ensure judicial compliance with statutory mandates governing DUI cases. . . . courts frequently ignore mandatory sentencing requirements in DUI cases. Unless the prosecutor is willing to seek an appellate remedy, the practice will continue unchecked.*

### **Adjudication**

#### **Mandatory Sentencing**

*The sentences recommended upon conviction of driving under the influence should be mandatory and not subject to suspension or probation. Specifically, the recommendations are that:*

*All States establish substantial mandatory minimum fines for DUI offenders, with correspondingly higher mandatory fines for repeat offenders.*

As of January 1988, 16 States had mandatory minimum fines for first offenders.

*Any person convicted of a first violation of driving under the influence should receive a mandatory license suspension for a period of not less than 90 days, plus assignment of 100 hours of community service or a minimum jail sentence of 48 consecutive hours.*

As of January 1988, 24 States had mandatory minimum license suspension for first-time offenders; 7 States mandated jail or community service for first offenders, and an additional 7 States mandated jail without any provisions for community service.

*Any person convicted of a second violation of driving under the influence within 5 years should receive a mandatory minimum jail sentence of 10 days and license revocation for not less than 1 year.*

As of January 1988, 14 States mandated some period of jail or community service, and an additional 28 States mandated jail without any provision for community service for second-time offenders; 43 States and the District of Columbia mandated license suspensions or revocations for second offenders.

*Any person convicted of a third or subsequent DUI violation within 5 years should receive a mandatory minimum jail sentence of 120 days and license revocation for not less than 3 years.*

As of January 1988, 39 States mandated jail for a third offense. Nearly all States mandated license suspension for a third offense.

### **Sentencing of Suspended Drivers Who Continue to Drive**

*States should enact a statute requiring a mandatory sentence of at least 30 days for any person convicted of driving with a suspended or revoked license or in violation of a restriction due to a DUI conviction.*

Few States have effectively implemented such sanctions, although some appear interested. Some States have also been considering attacking the problem of driving while suspended by confiscating the license plates or the vehicles of such offenders. The license plate confiscation approach is intended to make driving while suspended a more visible offense. It has the added advantage of little or no cost.

### **Felony DUI**

*Causing death or serious injury to others while driving under the influence should be classified as a felony.*

In 1988, 44 States and the District of Columbia had death-related offenses, often called vehicular homicide. In 38 States and the District of Columbia, this constituted a felony charge, and in 6 States it was a misdemeanor.

### **Court Administration**

*Speedy trial: DUI cases at the trial level should be concluded within 60 days of arrest. Sentencing should be accomplished within 30 days. The appellate process should be expedited and concluded within 90 days.*

From information reviewed, it appears that few courts have achieved this.

### **Preconviction Diversion**

*Preconviction diversion to alcohol education or alcohol treatment programs should be eliminated. A finding on the charge should be rendered and participation in education or treatment programs should then become a condition of sentencing.*

Although most States have eliminated statewide diversion programs, a few States and courts in several States still regularly divert offenders from sanctions into education or treatment. Often in such systems, no conviction and no record of an alcohol-related offense exists.

### **Presentence Investigation**

*Before sentencing, a court should obtain and consider a presentence investigation report detailing the defendant's driving and criminal record, and, where possible, an alcohol problem assessment report. In all cases, an alcohol problem assessment report should be completed by qualified personnel prior to the determination of an education or treatment plan.*

NCADD estimated that 23 States complied as of 1988.

### **Victim Programs**

*Any person convicted of driving under the influence who causes personal injury or property damage should pay restitution.*

As of 1988, NCADD estimated that 42 States complied.

*The U.S. Congress should enact legislation that eliminates the possibility that a drunk driver, judged civilly liable, will be able to escape the penalties of civil action by filing for bankruptcy.*

No additional information available.

*State and local governments or courts by rule should require victim impact statements (including oral or written statements by victims or survivors) prior to sentencing in all cases where death or serious injury results from a DUI offense.*

## **Licensing Administration**

### **Administrative Per Se License Suspension**

*States should enact legislation to require prompt suspension of the license of drivers charged with DUI upon a finding that the driver had a BAC of 0.10 in a legally requested and properly administered test. The prompt suspension should also extend to those who refuse the test (i.e., implied consent), as well as those who are driving in violation of a restricted license.*

As of the end of 1988, 24 States plus the District of Columbia had administrative per se laws, with many variations in the provisions of these laws.

### **Restricted Licenses**

*Each State driver's licensing authority should review its practice of issuing occupational hardship driver's licenses following suspension or revocation and establish strict uniform standards relative to issuance and control of such limited driving privileges. These licenses should be issued only in exceptional cases. In no event should this be done for repeat offenders.*

In fact, most States with mandatory license revocation, whether by the court or by the administrative process, make extensive use of restricted, occupational, and probationary licenses. Only about 21 States (i.e., those qualified for 408 incentive grant funds) have mandatory, minimum hard license periods during which restricted licenses are not to be issued.

### **Provisional License for Young Drivers**

*States should adopt laws providing a provisional license for young beginner drivers which would be withdrawn for a DUI conviction or an implied consent refusal.*

## **Education and Treatment**

### **Assignment Process**

*Rehabilitation and education programs for individuals convicted of DUI should be provided as a supplement to other sanctions and not as a replacement for those sanctions.*

Although most States appear to have moved away from diversion programs, some still make extensive use of them and allow sentencing to treatment programs in lieu of a conviction or a license or jail sanction.

*Presentence investigations, including alcohol assessments conducted by qualified personnel, should be available to all courts in order to appropriately classify the defendant's problem with alcohol. Repeat offenders should be required to undergo medical screening for alcoholism by a physician trained in alcoholism, an alcoholism counselor, or by an approved treatment facility.*

NCADD estimates that only 23 States require a presentence or a postsentence investigation. Fewer specify the type of personnel required to administer such tests.

*Alcohol education programs should be used only for those first offenders who have had no previous exposure to such programs. Problem drinkers and repeat offenders should be referred to more intensive rehabilitation programs.*

No additional information available.

*Alcohol treatment and rehabilitation programs should be available for individuals judged to need such services. The programs should be tailored to the individual's needs and the individual should be assigned to such programs for a length of time determined by treatment personnel and enforced by court probation.*

Most States use existing treatment facilities. It is not known how many programs include treatment tailored to the specific needs of the offenders.

### Compliance

*When assignments are not complied with, the courts or the administrative licensing agency must take steps to impose further restrictions on driving privileges or to assess further penalties as spelled out in the original sentence.*

Evidence from the States suggests that this remains an important problem to be resolved.

*A records reporting system should be available to assure that individual offenders assigned to education or treatment services do in fact comply with the assignments and to make information on compliance available to motor vehicle administration officials at the time of appearance for relicensing.*

Tracking of individual offenders from arrest through completion of sanctions remains a goal to be achieved. Software has been developed to aid community-level tracking systems.

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